HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITIONS Nos:20480 & 20520 OF 2007

Dated: 01.10.2007

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W.P.NO:20480 OF 2007

Between:

D. Ramaswamy

..Petitioner

And

1. Government of Andhra Pradesh, Home Department, rep., by its Principal Secretary, Secretariat, Hyderabad and others.

..Respondents

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W.P.NO:20520 OF 2007

Between:

D. Ramaswamy

..Petitioner

And

1. Inspector General of Police, Intelligence, Hyderabad & others.

..Respondents

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITIONS Nos:20480 & 20520 OF 2007

COMMON ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

Since the parties in both the writ petitions are one and the same and the issue involved in both the writ petitions connected with each other, both the writ petitions are disposed of by a common order.

W.P.No.20480 of 2007 is filed aggrieved by the order, dated 16.8.2007 passed by the A.P. Administrative Tribunal in O.A.No.2232 of 2001.

W.P.No.20520 of 2007 is filed aggrieved by the order dated 16.8.2007 passed by the A.P. Administrative Tribunal in O.A.No.3875 of 2001.

The petitioner in both the writ petitions is the applicant before the Tribunal.

Originally, the petitioner filed the O.A.No.2232 of 2001 seeking a direction to the respondents to give posting orders to the applicant on reinstatement as Assistant Manager, Intelligence Department in pursuance of promotion orders vide DO No.458/91 (Rc.No.480/A1/91), dated 15.2.1991 issued by the Inspector General of

Police, Intelligence, Hyderabad dehors the ousting of the applicant as I.D. Assistant on reinstatement vide Rc.No.2936/E1/PR/95, DO No.813/2000, dated 12.8.2000, issued by the Inspector General of Police, Intelligence, Hyderabad etc., to forthwith treat the period of his suspension from 22.2.1991 A.N. to 17.8.2000, as on duty and pay salaries for the said period.

The applicant filed another O.A.No.3875 of 2001 seeking to call for records relating to the impugned Memorandum Rc.No.2521/A4/PR/2001, dated 7.6.2001 issued by the Inspector General of Police, Intelligence, Hyderabad and to quash the same as illegal and arbitrary.

In the O.A.No.2232 of 2001, the tribunal passed interim orders directing the respondents to give effect to the promotional orders, dated 15.2.1991 issued by the 3rd respondent in D.O.No.458/91 (Rc.No.480/A1/91) and to complete such exercise within one week from the date of copy of the order.

The tribunal dismissed the O.A.No.3875 of 2001 having observed that though the distinction appears to be subtle but at the same time, there is any amount of legal difference, distinction and consequences between the acquittal of an employee-accused by giving clean acquittal on the ground of want of proof of charges for want of evidence, on the one hand, and acquittal, by giving benefit of doubt, on the other hand and as already observed the rulings cited apply to the case of clean acquittal and not to cases of benefit of doubt as the case on hand and hence, the 1st respondent is entitled to proceed against the applicant in pursuance of the impugned memo.

The Tribunal dismissed the O.A. No.2232 of 2001 while observing that by the time of filing the O.A., in the year 2001, the applicant is aged about 53 years and so, in and around the year 2005, he must have had already completed the age of 58 years and must have retired on attaining the age of superannuation and in any case, undoubtedly, he must have had already retired in the year 2006 and he is not in service at present and so, the O.A., as on today insofar as the relief with regard to giving of posting orders to the applicant became infructuous and hence, became liable for dismissal as such. However, the tribunal has observed that in respect of the relief as to treating the period of suspension from 22.2.1991 to 17.8.2000 as duty period with salary etc., is concerned, no orders are to be passed by the tribunal because as affirmed in the counter-affidavit filed, by the 4th respondent, the applicant is facing departmental enquiry.

Having aggrieved by these orders, the present writ petition has been filed.

It is contended by the learned Counsel for the petitioner-applicant that charge sheet issued is void for the reason that the Government has no power whatsoever to enquire into the matter as per section 4 of the A.P. Civil services (Disciplinary Proceedings) Tribunal Act. It is further contended that since the charge pertains to the year1990-91, the question of departmental enquiry at this length of time does not arise and therefore, the orders of the tribunal are liable to be set aside. In support of his contentions, the learned Counsel relied upon the judgment of a Division Bench of this Court reported in Government of A.P. Vs. P. Sadananda Murty and another[1].

On the other hand, the learned Government Pleader contended that the petitioner has obtained the stay of all further proceedings pending the above O.As and the stay continued till the disposal of the O.As i.e., nearly for a period of six years and therefore, inaction on the part of the respondents in proceeding with the charges leveled against the petitioner-applicant does not arise and that the orders of the tribunal do not warrant any interference and the writ petitions are liable to be dismissed.

Perused the material available on record.

It is relevant to extract the provisions of section 4 of the A.P. Civil Services (Disciplinary Proceedings) Tribunal Act, 1960 which reads as under:

> “The Government shall refer to the tribunal for enquiry and report such cases as may be

prescribed of allegations of misconduct on the part of the Government Servants"

Thus, the above provision makes it mandate to refer to the tribunal for enquiry and report such cases as may be prescribed of allegations of misconduct on the part of the Government Servants.

Of course, Section-4 of the Act which was in mandatory terms was amended by Andhra Pradesh Act 6 of 1993 and the work "shall" occurring in section-4 was replaced by the words "may" which gave a discretion to the Government to refer or not to refer the matter to the tribunal. Section-4A which was inserted in the Principal Act by the same amending Act, viz., Andhra Pradesh Act 6 of 1993 gave power to the Government to withdraw at any stage, any case from the tribunal before its conclusion. Thus, after amendment of the Act only, it confers powers to the Government to refer or not to refer the case to the tribunal for disciplinary proceedings or to withdraw any case already referred to the tribunal.

Therefore, in the facts and circumstances of the case coupled with the provisions of the Act and in view of the fact that the alleged charges or the disciplinary proceedings in question are prior to the amendment of the Act, We feel that this case has to be dealt with in a proper perspective in accordance with the provisions of the Act applicable to the facts of the case on hand.

At this juncture, the learned Government Pleader seeks liberty of this Court to deal with the case in accordance with the provisions of the Act applicable to the facts of the case on hand.

In view of the submission of the learned G.P. as well as the provisions of the Act, We feel it a fit case to set aside the judgment of the tribunal while granting liberty to the Government to deal with the case in accordance with law.

Subject to the above observations, both the writ petitions are allowed. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 1st October, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No: 20480 & 20520 OF 2007

(Common Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

Dated: 01.10.2007

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[1] 2001(2) ALD 164 (DB)